PROFESSIONAL SERVICES AGREEMENT
MS4 Working Group

THIS AGREEMENT is made and entered into on the date fully executed below by and between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman St., Missoula, MT 59802, referred to here as "City," and NewFields Environmental Holdco, LLC, a Delaware limited liability company, 700 SW Higgins Ave, Missoula, MT 59803 hereinafter referred to as "Consultant."

RECITALS

WHEREAS, the City desires to utilize Consultant to provide MS4 working group consulting and coordination services and

WHEREAS, Consultant has represented to the City that Consultant has the necessary expertise to furnish said services and has available to Consultant the necessary staff and resources to perform the independent services in a timely manner consistent with the nature of the project.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Purpose
City desires to have Consultant perform professional services to assist with MS4 Working Group coordination.

2. Effective Date and Term
This Agreement is effective upon the date of its execution by both parties and will terminate on upon 30 days' notice by the City to Consultant of its desire to terminate the Agreement by giving such notice to Consultant's designated liaison identified below. If this Agreement is terminated due to no fault of the Consultant, Consultant shall be entitled to equitable compensation for the demobilization of resources. The Term of this Agreement may be extended by mutual agreement of the parties by executing an amendment to this Agreement in writing.

3. Scope of Work

a. Consultant will perform the work and provide the services in accordance with the requirements of the Scope of Work attached here to as Exhibit A; and

b. If mutually agreed by City and Consultant and authorized in writing as provided in this subsection, Consultant shall also furnish additional services under this Agreement. To the extent additional services have been identified at the time of executing this Agreement,

they are itemized in Exhibit A and will be paid for by City as indicated in Section 4. As further additional services are requested of Consultant, this Agreement may be modified and subject to mutual consent by execution of an addendum by authorized representatives of both parties, setting forth the additional scope of services, their performance time schedule, and the compensation for such services.

4. Payment

a. City agrees to pay Consultant an amount not to exceed $7,500.00 for services outlined in Exhibit A. Consultant shall be compensated for additional services authorized pursuant to Section 3.b. above, which have not been identified at the time of executing this Agreement. Additional services will be specifically described in a fully approved and executed addendum to this Agreement. Payment for work beyond that described in Exhibit A or as contained in a fully approved and executed addendum to this Agreement is expressly denied without prior written authorization from City. Such authorization must include the signature of the Mayor.

b. Consultant shall submit monthly statements for basic and additional services rendered. City shall pay Consultant within 30 days of receipt of an itemized invoice for the services rendered or shall notify Consultant of any dispute by City concerning the performance of any services and the basis therefore and shall pay Consultant within thirty days for the services not in dispute. If any items are disputed by City, Consultant and representatives of City shall meet and confer regarding the disputed items within ten business days after City notifies Consultant of the services in dispute. City shall pay for any disputed services for which the dispute has been resolved to the satisfaction of the City within thirty days after such resolution.

5. Independent Contractor Status

The parties agree that Consultant, is an independent contractor for purposes of this agreement and the parties agree that Consultant is and shall be an independent contractor when performing services pursuant to this agreement. Consultant is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

Consultant shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Consultant shall maintain workers' compensation coverage for all members and employees of Consultant's business, except for those members who are exempted by law.

Consultant shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

6. Indemnity, Liability and Insurance

For other than professional services rendered, to the fullest extent permitted by law, Consultant agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, to the extent occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Consultant or Consultant's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Consultant agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Consultant or Consultant's agents or employees.

For this purpose, Consultant shall provide City with proof of Consultant's liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:

- Workers' Compensation: Statutory
- Commercial General Liability: $1,000,000 per occurrence
  $2,000,000 annual aggregate
- Automobile Liability: $1,000,000 property damage/bodily injury
  $2,000,000 annual aggregate
- Professional Liability: $1,000,000 per claim
  $2,000,000 annual aggregate

City shall be included or named as an additional or named insured on the Commercial General and Automobile Liability policies. The insurance must be in a form suitable to City.

EXCEPT FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND BREACH OF CONFIDENTIALITY, (A) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, ECONOMIC LOSSES OR LOST PROFITS, AND (B) CONSULTANT WILL NOT BE LIABLE IN THE AGGREGATE FOR ANY DAMAGES IN EXCESS OF $5,000,000.

7. Professional Service

Consultant agrees that all services and work performed under this agreement will be accomplished in a professional manner, in accordance with the accepted standards of Consultant's profession in performing the same Services under similar circumstances. Consultant is being hired by the City due to Consultant's representation of having the necessary experience required to produce required design documents that meet all specifications and requirements referenced in the bid and contract documents (the "Required Specifications"). City staff may review and provide comment or informal approval of the documents produced by Contractor, but the City staff may not have the experience or capacity to guarantee that the plans produced meet the Required Specifications. By executing this Agreement Consultant is agreeing to be solely

responsible for ensuring the professional design documents it produces meets the Required Specifications. The parties hereby agree that any claim(s) for re-performance of non-conforming Services based on breach of the warranties set forth in this Agreement must be brought within one (1) year of completion of the applicable Services. For the sake of clarity, the foregoing sentence is limited solely to City's ability to require re-performance of non-conforming Services and is not intended to limit any breach of contract or other claims arising out of any such non-conforming Services.

THE EXPRESS WARRANTIES IN THIS AGREEMENT SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

8. Compliance with Laws

Consultant agrees to comply with all federal, state and local laws, ordinances, rules and regulations.

9. Nondiscrimination and Equal Opportunity

Consultant agrees and shall comply with the following Non-Discrimination and Equal Opportunity policies:

NON-DISCRIMINATION

All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation, or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

EQUAL OPPORTUNITY POLICY

Consultants, contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Equal Opportunity Policy, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Equal Opportunity Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, to the extent practical, shall ensure that subcontractors and vendors comply with this policy and the City's non-discrimination and equal opportunity requirements found at Chapter 9.64 of the Missoula Municipal Code. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds or future contracting opportunities.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of equal employment for the City of Missoula, its employees, program participants, trainees and applicants.

10. Default and Termination

If either party fails to comply with any condition of this agreement at the time or in the manner provided for, the other party, at its option, may terminate this agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this agreement.

11. Modification and Assignability

This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written agreement, may be considered valid or binding. This agreement may not be enlarged, modified or altered except by written amendment signed by both parties hereto. The Consultant may not subcontract or assign Consultant's rights, including the right to compensation or duties arising under this agreement, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this agreement.

12. Ownership and Publication of Materials

All reports, information, data, and other materials prepared by the Consultant pursuant to this agreement are the property of the City. The City has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use without written verification or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Consultant. No material produced in whole or in part under this agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the City. Nothing in this

Agreement shall affect Consultant's ownership in any intellectual property in any material that exists prior to the date of this Agreement, including without limitation any existing ideas, know-how and methodologies, or that is developed independently of the Services and this Agreement during the term of this Agreement ("Consultant IP"). To the extent that the work product contains Consultant IP, upon payment in full for the Services, Consultant grants to City a nonexclusive, fully paid up, perpetual license to use or copy such Consultant IP as may be integrated in the final work product solely in furtherance of City's use of the work product for the purpose set forth in this Agreement.

13. Liaison

The City's Designated liaison with Consultant is Matthew Peterson, and Consultant's designated liaison with City is Tracy Campbell.

14. Previous Agreements

This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

15. Applicability

This agreement and any extensions of it shall be governed and construed in accordance with the laws of the State of Montana.

16. Miscellaneous

16.1 The Parties agree that there are no third party beneficiaries, intended or implied, to this Agreement. As such, no third party will have the right to rely on such work product or the Work. The foregoing limitation shall not apply to reliance on the deliverables by a governmental agency or authority, or affiliate of client in furtherance of the purpose of the Work.

16.2 As to any dispute involving City or the subject matter of the Services in which Consultant is either not a named party or not at fault, City shall pay Consultant for any reasonable attorneys fees, legal expenses, other costs incurred and for the time of Consultant's personnel spent in responding, defending or participating in City's dispute, including but not limited to all such costs and time of Consultant or its personnel when called or subpoenaed for depositions, examinations, appearances or document production.

16.3 City will provide access to work sites and complete and accurate information as necessary for performance of the work. Consultant will have the right to rely on such information.

16.4 Consultant shall have the right to suspend performance of the Services, without liability, immediately upon notice to City, if Consultant determines in its sole discretion, based on

circumstances surrounding the Services, that the health and safety of its personnel or its subcontractors' personnel is or may be at risk in performing the Services.

16.5 Neither Party will be liable for failure or delay in performance to the extent caused by force majeure events or circumstances beyond its reasonable control.

WITNESS, the parties here have executed this instrument the day and year written below.

CONSULTANT:

John Hazard Jul 8, 2025

CITY OF MISSOULA:

Jeremy Keene, Director, Public Works & Mobility Jul 10, 2025

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT SCOPE OF WORK: MS4 WORKING GROUP

Scope of Work Date: July 1, 2025

Scope of Work No.: 2025-01

Professional Services Agreement Date: July 1, 2025

Background:

Client's storm drainage system is considered a small municipal separate storm sewer system (MS4) and is therefore subject to MS4 regulations and permitting requirements under Montana's General Permit for Storm Water Discharges Associated with Small MS4's, Permit Number MTR040000 (General Permit). The General Permit is administered by the Montana Department of Environmental Quality (DEQ). The current (effective) General Permit will expire on March 31, 2027 and a new General Permit will be issued after the current permit expires.

DEQ is hosting a series of MS4 Working Group Sessions throughout 2025 to discuss numerous topics relating to the current permit, introduce concepts and/or proposed language for the new General Permit, and solicit feedback from MS4 permittees and other stakeholders. Client is participating in the MS4 Working Group Sessions and has requested assistance from Consultant's Senior Engineer, Matthew Peterson.

Scope of Services: Consultant will perform consulting services to assist Client with MS4 Working Group coordination activities. Consultant's activities will be directed by Client throughout the course of this work and are anticipated to include, but not be limited to, attendance and participation in Working Group sessions, background research, facilitating meetings and email coordination between Client and Montana's other MS4 permittees, drafting comments and feedback for submittal to DEQ, and coordinating with DEQ outside of Working Group sessions. It is anticipated that Client will instruct Consultant to engage with other Montana MS4 permittees to obtain their perspectives and input throughout the course of this work.

The majority of Consultant's services will be conducted by Consultant's senior engineer. Background research may be conducted by Consultant's technical staff for efficiency, if needed.

Time Period: Consultant will perform the Services in the following time period: July 1, 2025 to December 31, 2025 or when the budget is reached for this SOW, whichever is sooner.

Deliverables: There are no currently defined deliverables associated with this work. Consultant will draft meeting notes, comments, and feedback for Client's consideration as directed by Client through the course of this work.

Compensation:

Fees: With respect to the performance of the Services described herein, Client shall pay to Consultant up to $7,500 compensation in the form of professional service fees on the following time and materials basis.

Senior Engineer – Matthew Peterson	$190/hr
Technical Staff	$125/hr

Consultant will notify Client and stop work when the budget of $7,500 is reached.

Expenses: Client shall also reimburse Consultant for travel time and expenses to attend the Working Group meetings in person in Helena, MT. The meetings may be attended virtually through Zoom, and Consultant will be reimbursed for travel expenses only if Consultant's in person attendance is requested by Client.

PSA with Newfields for the MS4 Working Group

Final Audit Report 2025-07-10

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